Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 1169

JAMES C. GABRIEL, *Pro Se* a Class B STOCKHOLDER in MISSOURI PACIFIC RAILROAD COMPANY, for himself,

Petitioner Pro Se,

—v.—

BETTY LEVIN, on behalf of herself and all other holders of CLASS B COMMON STOCK of MISSOURI PACIFIC RAILROAD COMPANY, and on behalf of said corporation, and ROBERT LE VASSEUR and ALLEGHANY CORPORATION,

Plaintiffs-Appellees-Respondents,

—against—

MISSISSIPPI RIVER CORPORATION, MISSOURI PACIFIC RAILROAD COMPANY, ROBERT H. CRAFT, T. C. DAVIS and THOMAS MILBANK,

Defendants-Appellees-Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY TO RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Petitioner's Critical Reply to Respondents' Memorandum in Opposition to My Petition for a Writ of Certiorari Filed by Petitioner.

First and foremost, Respondents did not answer my Petition for a Writ of Certiorari for a due process of law evaluation of my shares of Class B.

Respondents' Memorandum in opposition to my Petition for a Writ of Certiorari has nothing in their answering brief that rebuts my request to the United States Supreme Court for that august body to secure and to protect my Constitutional rights by a due process of law evaluation of my MoPac Class B equity bearing Common stocks by the I.C.C., according to the I.C.C. MoPac "Agreed System Plan" of 1954-1955, or MoPac Charter, 290 I.C.C. 477, pages 492, 597-600, 624, 625 and 665, which is a law of the United States. Class B must be evaluated under the "Agreed System Plan" in order to find my Class B's real and true value because the "Agreed System Plan" was approved by the Interstate Commerce Commission in 1954, which certified it to the United States District Court of original jurisdiction, Eastern Division, Eastern Judicial District of Missouri in Saint Louis, which in turn approved it, and certified it to the I.C.C. in Washington, D.C. on February 25, 1955, making the "Agreed System Plan" or MoPac Charter a law of the United States. The Interstate Commerce Commission must obey this law of the United States which the I.C.C. helped make, by evaluating my Class B equity bearing Common shares under due process of law according to MoPac's 1954-1955 Charter. This due process of law evaluation of my Class B MoPac shares is my Constitutional right.

Not to allow me a due process of law evaluation as a dissenter Class B stockholder, against the MoPac "Plan of Recapitalization," who voted all of his Class B equity bearing Common shares against this "Plan of Recapitalization" is unconstitutional. It is against the 5th Amendment —"No person shall be deprived of life, liberty or property without due process of law."

It is also against Article 1, Sections 9 and 10 of the U. S. Constitution not to allow me a due process of law evaluation.

Section 9—"No bill of attainder or ex post facto law shall be passed."

Section 10—"No State * * * shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, * * *." The "Agreed System Plan" of MoPac by the I.C.C. and the U. S. District Court in Saint Louis—290 I.C.C. 477, is a contract, and my Class B equity bearing Common shares must be evaluated under that contract, under due process of law to find their true real value. To transfer the values from my Class B equity shares to the Class A $5 preferred $100 value shares without a due process of law evaluation of my B shares first, to find the real true values of my Class B, and thus deprive me, a minority B dissenter stockholder, of what values I am entitled to, goes too far. It is clearly unconstitutional.

In addition, according to the *Wood* case—*Wood* v. *United States,* 132 F.Supp. 586 (S.D.N.Y. 1955) in which historical case Honorable Edward Weinfeld concurred in 1955, it was flatly held that if one class of stockholders tries to transfer values from one Class of railroad stock to another Class of railroad stock under the Interstate Commerce Act, in a solvent railroad company, it is unconstitu-

tional. This is what Defendants-Appellees Class A $5 preferred $100 value stockholders are doing to my Class B equity bearing Common shares, using the "Plan of Recapitalization" as an excuse to transfer a value of over $20,000 from each Class B to the Class A $5 preferred shares $100 value stocks, now, as of December 31, 1972, making each $100 Class A now have a value of $430 per share and each Class B reduced in value to $2,450 from $22,500 per Class B. Class B is being reduced from an overall value of 82½% equity ownership of the MoPac Company to a mere 25½%, by transferring that value to the Defendants-Appellees Class A by raising the Class A preferred from 17½% of the MoPac Company equity value to 74½%, or a gain of 57 percentage points, or a gain of over $615 million values gotten from Class B, and transferred to Class A $5 Preferred stocks, mostly going to Mississippi River Corporation which owns 62% of the preferred, as of 12/31/72.

Unless this Honorable United States Supreme Court grants me relief by due process of law evaluation of my Class B MoPac equity bearing Common shares, my Class B property will be taken away from me, and over 57 percentage points or over $20,000 in value from each of my Class B shares will be transferred to the Class A $5 preferred, and to the 62 percent of Class A $5 preferred being owned by Mississippi River Corp., which controls the Missouri Pacific Railroad Board of Directors. Mississippi River Corp. is the architect of this so called "Plan of Recapitalization," which benefits the Class A $5 preferred over $615 millions, this $615 million values made up of Retained Income and Property values as of 12/31/72.

Petitioner *Pro Se* is suing for himself to have his Class B equity shares evaluated under due process of law which

is his constitutional right. This is not a class action case. My claim to due process of law evaluation has been rejected by Honorable Edward Weinfeld, U. S. District Judge, S.D.N.Y., 65 Civ. 5095 (EW), even though Petitioner told his Honor that Class B has a value of over $22,500 per share as of 12/31/72, made up of $349 million in retained income and $545 million in property values in land and land values which have more than doubled and tripled in the last few years) or a total of $894 million values, which when divided by 39,731 shares of Class B outstanding, amount to $22,500 per Class B (see pp. 5 and 6 of March 19, 1975 transcript before Hon. Weinfeld in Room 706 at 11:00 A.M.), for which Hon. Weinfeld says $2,450 per Class B is "FAIR VALUE" for each share. This means a transfer of over $20,000 from each Class B to the Class A #5 pfd. $100 value per share stocks, which after this "Recapitalization Plan" gives each a $5 pfd.—a value of over $430 per share, in addition to a Common Equity share status from its former preferred status, especially valuable in an inflationary period of our monetary economy.

According to the *Wood* case—*Wood* v. *United States,* 132 F. Supp. 586 (S.D.N.Y. 1955) in which Honorable Edward Weinfeld himself concurred, it was flatly held that that if one class of stockholders tried to transfer values from one class of railroad stocks to another class of railroad stocks under the Interstate Commerce Act in a solvent railroad company, it would be unconstitutional. There is a transfer of over $20,000 from each share of Class B Missouri Pacific Railroad shares to the Class A $5 preferred $100 value stocks in this "Plan of Recapitalization" which, according to the *Wood* case, is unconstitutional.

I had asked Hon Weinfeld to have my Class B evaluated under due process of law according to the MoPac "Agreed System Plan" of 1954, or Charter, and his Honor denied me this as "frivolous." But here is a transfer of over $20,000 per Class B to Class A $5 Preferred, which is against the *Wood* case, and Hon. Weinfeld says my request for a due process of law evaluation is "frivolous." Hon. Weinfeld's reply was as follows (see p. 11 of March 19, 1975 Transcript) (67 Civ. 5095 (EW)): "I am going to deny the request made by the defendant (Alleghany Corporation, represented by Donovan Leisure), which I regard as a proper one, that costs be imposed because you are appearing for the first time pro se. But I am giving notice to you now, and notice to any other applicant that a similar application will be denied because there is no substance to it, and will be denied with the imposition of substantial costs."

I am interested in getting my Class B evaluated under due process of law, according to the MoPac Charter of 1954-1955, made by the I.C.C. and the U. S. District Court of Saint Louis, to find my Class B real and true value so that I get for my Class B the value that I am entitled to as a minority Class B dissenter against the "Plan of Recapitalization" by the I.C.C., MoPac and Mississippi River Corporation. I bring this request before Hon. Weinfeld's Court, and he calls my request for due process evaluation as "frivolous." I am being threatened and intimidated that "costs be imposed" unless I drop the case, even though I am asking for my constitutional rights, due process evaluation.

I am being threatened and intimidated for my wanting to exercise my constitutional rights, my civil rights for my own property. These rights and privileges are secured to me by the Constitution or laws of the United States and those who threaten or intimidate me in the free exercise or enjoyment of any right or privilege secured to me by the Constitution or laws of the United States are liable under the Civil Rights Act.

Respondents should not oppose petitioner to have a due process evaluation of his Class B property. His motions, appeals and petitions are not frivolous, but are worthy. Petitioner has a constitutional right to have his Class B lawfully evaluated.

The District Court erred in not allowing Petitioner to have his Class B shares evaluated under due process of law, so that Petitioner, a Class B dissenter, would not be deprived of the values his MoPac Class B was entitled to under the United States Constitution.

Kindly grant me the Writ so that giant corporations will not henceforth in similar cases be permitted to deprive individual property owners like myself of their property rights secured to all by the Constitution of the United States.

This case is very worthy of this Honorable Court's consideration because it involves fundamental issues of the property rights of individuals regarding private ownership of property to be henceforth safeguarded from the grasping hands of giant corporate structures, like Mississippi River Corporation in this instant case, whose aim is to take away from small minority stockholders their very

valuable stocks at a fraction of their real true value, not by buying them in the open competitive market place, but by the clever use of lawyers to overcome the Government agencies and the Federal Courts, using them as vehicles to force rightful owners to make them give up their valuable holdings at a fraction of their real and true value, in spite of the fact that in doing so, by not having a due process of law evaluation of their Class B stocks, it is depriving them of the true and real value of their Class B stocks. This is unconstitutional.

Kindly grant me the Writ, not only for the benefit of this Petitioner *Pro Se,* who is asking this Honorable Court to have his Class B evaluated under due process of law by the I.C.C. to find its real true value, but also for the honor of our liberty and for justice for all under our constitutional form of government of limited government powers in order to secure and protect our inalienable rights or privileges, secured to all of us by the Constitution or laws of the United States, so that laws shall apply equally to all, without favoritism to some or discrimination against others, which is a projection of God our almighty Creator's Commandments.

Conclusion

For the reasons given I pray that the Writ be granted by this Honorable Supreme Court.

Petitioner's Direct Reply to Respondents' Memorandum in Opposition.

The Decisions Below

1. Petitioner James C. Gabriel, *Pre Se,* Class B equity bearing Common stockholder did not at any time appoint a representative to represent him, nor did he ever agree to a class action against MoPac to compel the payment of greater dividends on his Class B Common stocks. Petitioner is suing for himself for a due process of law evaluation of his Class B equity bearing Common shares.

2. Petitioner voted all of his Class B Common equity bearing shares against the Missouri Pacific Railroad "Plan of Recapitalization" on June 15, 1973, having gone to Saint Louis to be at the MoPac Stockholder's Special Meeting on June 15, 1973.

3. The United States District Court for the Southern District of New York, Hon. Edward Weinfeld's Court, U.S.D.J. changed the Class Action on dividends and conspiracy as Ordered by Hon. Frederick Van pelt Bryan, U.S.D.J. on October 9, 1968 (Civ. 67-5095) into a "Settlement Agreement" dated December 18, 1972, or a "Plan of Recapitalization," under Section 20a of the Interstate Commerce Act, under the same pleadings of dividends and conspiracy. Hon. Weinfeld approved the Settlement Action by his Opinion of March 19, 1973, and by his Judgment of May 2, 1973, giving each Class B a value of $2,450 per share as "FAIR VALUE," whereas Class B under due process of law evaluation according to the "Agreed System Plan" or MoPac Charter has a value of $22,500 per Class B share,

made up of $349 Million Retained Income and $545 Million property values or total of $894 Million for 39,731 Class B. This was a transfer of $615 Million to the Class A $5 preferred, which when added to $186 Million, a value equals $801 Million.

4. Petitioner William R. Wesson filed a Motion on April 5, 1973, at the U. S. District Court, Southern District of New York, in *Levin et al.,* Plaintiffs, against *Mississippi River Corp., et al.,* Defendants. Wesson, for himself and other Class B stockholders similarly situated, wanted an Order from Hon. Weinfeld to opt out of this Action—67 Civ. 5095 [EW]. On April 10, 1973, Honorable Edward Weinfeld denied Wesson's right to opt out, even though Wesson said his Class B had a value of over $19,000 per share.

5. Hon. Weinfeld allowed a transfer of over $20,000 value per Class B from Class B to Class A $5 preferred $100 value stocks by not allowing Wesson to opt out of this Class Action and have his Class B evaluated under due process of law to find its real true value. Even Hon. Weinfeld admitted in his Opinion, pages D-11, D-12 of Proxy Statement as follows: "There appears to be no dispute that should the new preferred (1,864,052) shares be converted into new Common, the equity positions of the B stockholders would be reduced from 61½% to 25½%." So that even though over $20,000 per Class B values or a total of over $615 million were being transferred from the Class B equity bearing Common shares to the Class A $5 preferred stocks, Hon. Weinfeld refused to let Wesson opt out of this Class Action to get his Class B evaluated under due process of law. Neither would Hon. Weinfeld allow present petitioner, Gabriel, due process of law.

In *Woods* v. *United States,* 132 F.Supp. 586 (S.D.N.Y. 1955) with Honorable Edward Weinfeld concurring in that case, it was flatly held that if one class of stockholders tried to transfer values from one class of railroad stocks to another class of railroad stocks under the Interstate Commerce Act in a solvent corporation, it was unconstitutional. This is what is happening in the present Missouri Pacific Railroad Case. And yet Hon. Weinfeld allowed this transfer to happen in the present case of petitioner James C. Gabriel.

The Second Circuit Court of Appeals affirmed on Judge Weinfeld's Opinion and Judgment. This Hon. U. S. Supreme Court denied certiorari and rehearing. *Levin* v. *Mississippi River Corp.,* 59 F.R.D. 353 (S.D.N.Y.), aff'd on Opinion below sub nom. *Wesson* v. *Mississippi River Corp.,* 486 F.2d 1938 (2d Cir.), cert. denied sub nom. *Wesson* v. *Levin,* 414 U.S. 1112 (1973), rehearing denied, 415 U.S. 939 (1974).

The Settlement was approved by Commission Division 3, Commissioners Tuggle, Deason and MacFarland on December 6, 1973 after a hearing in September 17 to 21, 1973 before Law Judge Gibbons who presided over the hearing, but was decided, not by the hearing Judge Gibbons, but by Commission Division 3—MoPac Securities, Finance Docket #27346. The I.C.C. decision was challenged before a three judge court in New Jersey, and the decision is still pending. Civil Action #74-469, Civil Action #74-470, and Civil Action #74-471, U. S. District Court, District of N. J.

Suing for themselves and all others similarly situated, Messrs. Napoleon C. Gabriel owner of five shares of MoPac Class B shares and Michael Moumousis owner of two

shares of Class B were assessed $1919.32 by Alleghany Corporation for costs for extra Briefs and Appendixes that Alleghany said were not up to par. They were told by attorneys for Alleghany that if they dropped their case and did not take it to the U. S. Supreme Court they would not have to pay this $1919.32 costs. But they took their case to the Supreme Court, Case #74-1171 October Term 1974, Petition for a Writ of Certiorari and also for a Petition for a Rehearing, March 17, 1975 and May 9, 1975. These were both denied. Alleghany Corporation, through Honorable Edward Weinfeld's Court, U.S.D.J., S. D. of New York, threatened both of them with contempt of Court and jail terms if $1919.32 was not paid. I have the transcript. The $1919.32 was paid and the contempt and jail threats were dropped. Do you wonder why our country is in such bad shape in all ways, with such goings on by large corporate giants who are out to get the little man who is fighting for mere survival, for justice under our constitutional form of government? But what chance has the little man except to keep on fighting for justice. The U. S. Constitution provides that laws shall apply equally to all without favoritism to some or discrimination against others. Unless the Courts follow this equality before the law according to the Constitution, this wonderful country of the U. S. A. under these goings on is in for a lot of trouble, and which may lead to a sort of spontaneous combustion reaction. Let us pray that God Our Creator may save us from such evil and that Jesus Christ help us from punishment because of these evil men and their evil doings.

On March 19, 1975 present Petitioner, James C. Gabriel, moved the U. S. District Court to evaluate my Class B equity bearing shares under due process of law to find

my Class B real and true value according to the MoPac Charter or "Agreed System Plan" of 1954-1955. My request for a due process evaluation was denied by the Hon. Weinfeld Court on March 21, 1975 as "frivolous," and "No substance to it."

On April 11, 1975 Petitioner filed a Notice of Appeal. My appeal was filed in the U. S. C. A., Foley Square, N. Y. City, N. Y. was heard on November 11, 1975. I asked for a due process of law evaluation of my Class B shares according to the "Agreed System Plan" or MoPac Charter of 1954-1955. Defendants asked the Court to put costs and sanctions on me. I protested to the Hon. Court that all I was asking for was a due process of law evaluation, my Constitutional rights, according to the "Agreed System Plan" or Charter of MoPac, 290 I.C.C. 477, according to the 5th Amendment due process of law and my Civil Rights.

On November 18, 1975 my appeal was denied by the Appeal Court as follows:

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

"Although at this time we will not act pursuant to Appellees' suggestion that costs be imposed upon Gabriel under F.R.A.P. 38, further appeals of this nature in a matter already so thoroughly litigated my justify the imposition of such a sanction."

I had asked the Hon. Court of Appeals to have my Class B property protected from conspirators who are trying to take it away from me at their price. I was not asking for any special price for my Class B, I was only asking that I as an individual, and not as a Class Action that went on before my case *pro se* arrived, want to have my stock properties evaluated according to the Missouri Pacific Railroad Charter or "Agreed System Plan" of 1954-1955 which was made a law of the United States of America in 1955. I had even presented to the Honorable three judge Appeals Court judges 3 certified copies of the "Agreed System Plan," 290 I.C.C. 477, from the Interstate Commerce Commission so that there could be no mistake of what I was asking for. I had also presented copies of the MoPac Charter or "Agreed System Plan" to the Appellee lawyers in the court room.

After I got through presenting my case to the Honorable Court of Appeals that I wanted my Class B evaluated according to my Constitutional rights, the Appellee lawyers asked the Honorable Court to impose costs on me, in order to shut me up from appeals of this nature—my Constitutional rights. After the Appellee lawyers had their say, I again made my pleas to this Honorable Court that I was standing up for my Constitutional rights to have my Class B stocks evaluated under due process of law according to the "Agreed System Plan" or Charter of MoPac, made in 1954-1955.

These Appellees are threatening my Civil Rights. They are conspiring to injure me by threatening costs upon me and they are intimidating me because I dare to exercise my rights or privileges secured to me by the Constitution or laws of the United States. They are conspiring against my

Civil Rights. So I asked that Honorable Court to charge these Appellees for conspiring against my Civil Rights, rights that are secured to me by the Constitution or laws of the U. S. U.S.C.A. Title 18, Sections 241, 242, Chapter 13. I made several motions and affidavits to the Second Circuit which were denied. All I am asking for is for an evaluation of my Class B Common equity B shares. I as a Class B dissenter minority Class B stockholder have a Constitutional right to a due process evaluation. I shall fight all the "Super Lawyers" there are in order to have my stocks evaluated under due process. We still live in America with a Constitution to protect our rights.

REASONS FOR GRANTING THE WRIT

My Answer to Their Reasons for Denying Petition

Petitioner is suing for himself and he is asking for an evaluation of his Class B shares under due process of law. He is a Class B stock dissenter against a "Plan of Recapitalization" that he voted against at the Special Meeting of the Missouri Pacific Railroad on June 15, 1973, at Saint Louis.

As I had stated before, all I have asked for is a due process evaluation of my Class B. If I have been rejected by the lower courts because I want a due process of law evaluation, that is the main reason why I am appealing to the United States Supreme Court for a due process evaluation of my Class B shares.

Petitioner is not abusing the judicial process with "frivolous" motions, appeals and petitions. It is Respondents who are abusing the judicial process. Petitioner is suing

for a worthy and serious cause for a due process of law evaluation of his Class B shares according to the Constitution and laws of the United States. Petitioner is trying to protect his property rights. Respondents are abusing judicial process by trying to defeat justice.

Petitioner only alleges the fact that he is seeking a due process of law evaluation for his Class B shares. This is what I have been asking for at all times.

I had asked the District Court for a due process of law evaluation of my Class B shares according to the "Agreed System Plan" of 1954-1955, 290 I.C.C. 477. This is the Missouri Pacific Railroad Charter to find Class B real and true value so as not to deprive me, a minority Class B dissenter, of what I am entitled to according to the rights secured to me by the United States Constitution.

The United States District Court should have allowed me, who is a MoPac Class B dissenter against the MoPac "Plan of Recapitalization," a due process of law evaluation of my Class B shares, and to not have decided that my request for a due process evaluation of my Class B shares according to the MoPac "Agreed System Plan" or Charter of 1954-1955, was "frivolous," and that costs should be imposed upon me, but because I am appearing for the first time *pro se,* his Honor is "going to deny the request made by the defendant" Alleghany Corporation that costs be imposed upon me. I have the Southern District Court Reporters U. S. Court House Transcript as proof of Hon. Weinfeld's decision. All I have been asking for is for my Constitutional rights—for a due process of law evaluation of my Class B shares, for Justice.

Conclusion

Please grant me the Writ.

The Petition for a Writ should be granted for all of the above stated reasons by this Honorable Supreme Court for the sake of our Constitutional form of Government for the cause of Justice, in that laws shall apply equally to all without favoritism to some or discrimination against others, which is a projection of God Our Almighty Creator's Commandments.

Respectfully submitted,

James C. Gabriel, Pro se

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Certificate of Service

I, JAMES C. GABRIEL, *Pro Se*, Petitioner, do hereby certify that 3 copies of each of the above and foregoing Petitioner's Reply to Respondents' Memorandum in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit, has been deposited in the United States Mail, postage prepaid, on this the 31st day of March, 1976, to the following addressees:

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James C. Gabriel Pro se

JAMES C. GABRIEL, *Pro Se*
Petitioner